

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC  
OF SRI LANKA**

In the matter of an application under  
Article 140 of the Constitution for  
mandates in the nature of writs of  
Certiorari, Mandamus and  
Prohibition.

1. W.G.W.Aanandasiri,  
Railway Protection Force  
Rathmalana.  
And two hundred and twenty six  
(226) others

Petitioners

C.A. Writ Application No: 193/2007

Vs

1. K.A.Premasiri,  
The General Manager,  
Department of Railways,  
Railway Headquarters,  
Colombo 10.  
And hundred and eight (108) others.

Respondents.

BEFORE : S. SRISKANDARAJAH, J (P/CA)  
COUNSEL : Manohara de Silva, P C with  
Ms. P. Wickramaratne  
for the Petitioners,  
Milinda Gunathilaka SSC

for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

B.Manawadu with T.N.Silva

for the 3<sup>rd</sup> to 48<sup>th</sup> , 50<sup>th</sup> to 58<sup>th</sup> 60<sup>th</sup> ,62<sup>nd</sup> 64<sup>th</sup> to 88<sup>th</sup> ,  
90<sup>th</sup> to 99<sup>th</sup> ,101<sup>st</sup> to 103<sup>rd</sup> and 105<sup>th</sup> to 109<sup>th</sup>  
Respondents.

Argued on : 16.02.2010  
Written submissions on : 06.12.2010 (Petitioners & Respondents)  
&15.02.2011 (1<sup>st</sup> and 2<sup>nd</sup> Respondents)  
Decided on : 20.01.2012

**S.Sriskandarajah.J.**

The Petitioners are security officers of the Railway Protection Force. They joined the said force between 1988 and 1996. According to the scheme of recruitment and promotion of the Railway Protection Force the Petitioners' next promotion is to the rank of Sergeant. For promotion applications will be called for the vacancies exist at the time of calling for application. Applications will be called from among those Security Officers whose appointments have been confirmed and who had passed the Efficiency Bar Examination and who have four years satisfactory service. Those who successfully completed a competitive examination will face a structured interview at which marks will be awarded for additional qualifications and seniority.

A group of Security Officers, who joined the Railway Protection Force in 1985, filed a complaint bearing No.HRC/L/935/01 at the Human Rights Commission of Sri Lanka, alleging that their fundamental rights have been violated by the promotion of certain Security Officers who joined the Railway Protection Force along with them to the rank of Sergeant. The Human Rights Commission after an inquiry has made its recommendation dated 28.05.2004 to the effect:

- (a) Effective from 1989 all Petitioners who have the necessary number of years of service should be promoted to the rank of Sergeant.
- (b) Those officers who are eligible to be promoted to the rank of Sub-Inspector in terms of Scheme of Recruitment should be promoted to the said rank with effect from 1997.

In view of the said Recommendation the 3<sup>rd</sup> to the 109<sup>th</sup> Respondents were promoted to the rank of Sergeant. The Petitioners are challenging this promotion and have sought a writ of certiorari to quash the said promotion.

It is not the position of the Petitioners that the said 3<sup>rd</sup> to the 109<sup>th</sup> Respondent are not qualified under the scheme of recruitment to be promoted to the rank of Sergeant. But their position was that the said promotions were effected without holding a competitive examination and a structured interview. The Petitioners contended that if the 1<sup>st</sup> and 2<sup>nd</sup> Respondents complied with the Scheme of Recruitment and Promotion that they would also had an opportunity to apply for and be considered for promotion to the Rank of Sergeant.

There is no fundamental violation of the scheme of recruitment in granting the said promotions to 3<sup>rd</sup> to the 109<sup>th</sup> Respondents as they are qualified for promotion under the scheme of Recruitment. But the procedure of granting promotion was not followed as this was done on the Recommendation of the Human Rights Commission. But in any event these promotions would not have affected the Petitioners as the said promotions were made on a supernumerary basis, therefore the vacancies occurring in the normal course will be filled by suitable candidates after calling for applications according to the scheme of Recruitment. In these circumstances the decision to promote the 3<sup>rd</sup> to the 109<sup>th</sup> Respondents cannot be quashed by way of writ of certiorari as the grounds to issue the writ were not established.

The Petitioners have sought a writ of certiorari to quash the decision of the 1<sup>st</sup> and/or 2<sup>nd</sup> Respondent not to promote the Petitioners to the rank of Sergeant. The Petitioner has failed to produce such a decision with this application. The Respondents have stated that they have not made such a decision. In these circumstances this court cannot quash a non existing decision.

The Petitioners have sought a writ of mandamus directing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to promote the Petitioners to the rank of Sergeant. Even if the Petitioners have fulfilled the basic requirements for promotion it has to be effected according to the procedure laid down in the Scheme of Recruitment. The promotion depends on the cadre vacancies. A promotion cannot be claimed as of right; a mandamus is issued only if the Petitioners have a statutory right to promotion and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have a public legal duty to enforce that right.

*In Credit Information Bureau of Sri Lanka V Messrs Jafferjee & Jafferjee (Pvt) Ltd [2005] 1 Sri L R 89 at 93 the Supreme Court held:*

“There is rich and profuse case law on Mandamus on the conditions to be satisfied by the Applicant. Some of the conditions precedent to the issue of Mandamus appear to be :

- (a) The Applicant must have a legal right to the performance of a legal duty by the parties against whom the mandamus is sought (*R v Bamstaple Justices*<sup>(1)</sup>) The foundation of Mandamus is the existence of a legal right (*Napier Ex parte*<sup>(2)</sup>)
- (b) The right to be enforced must be a "Public Right" and the duty sought to be enforced must be of a public nature.
- (c) The legal right to compel must reside in the Applicant himself (*R v Lewisham Union*<sup>(3)</sup>)
- (d) The application must be made in good faith and not for an indirect purpose

(e) The application must be preceded by a distinct demand for the performance of the duty

(f) The person or body to whom the writ is directed must be subject to the jurisdiction of the court issuing the writ.

(g) The Court will as a general rule and in the exercise of its discretion refuse writ of Mandamus when there is another special remedy available which is not less convenient, beneficial and effective.

(h) The conduct of the Applicant may disentitle him to the remedy, (i) It would not be issued if the writ would be futile in its result.

(j) Writ will not be issued where the Respondent has no power to perform the act sought to be mandated.

The above principles governing the issue of a writ of Mandamus were also discussed at length in P. K. Benarji Vs H. J. Simonds(4). Whether the facts show the existence of any or all pre-requisites to the granting of the writ is a question of law in each case to be decided not in any rigid or technical view of the question, but according to a sound and reasonable interpretation. **The court will not grant a Mandamus to enforce a right not of a legal but of a purely equitable nature however extreme the inconvenience to which the applicant might be put.**" (Emphases added)

In the instant case the Petitioners have not established that they are entitled for a writ of mandamus. For the above reasons I dismiss this application without costs.

President of the Court of Appeal